

UNIFORM ELECTRONIC TRANSACTIONS ACT (1999)

With the advent of electronic means of communication and information transfer, business models and methods for doing business have evolved to take advantage of the speed, efficiencies, and cost benefits of electronic technologies. These developments have occurred in the face of existing legal barriers to the legal efficacy of records and documents which exist solely in electronic media. Whether the legal requirement that information or an agreement or contract must be contained or set forth in a pen and paper writing derives from a statute of frauds affecting the enforceability of an agreement, or from a record retention statute that calls for keeping the paper record of a transaction, such legal requirements raise real barriers to the effective use of electronic media.

By establishing the equivalence of an electronic record of the information, the Uniform Electronic Transactions Act (UETA) ([Chapter 1A of Title 8, Code of Alabama 1975](#)) removes these barriers without affecting the underlying legal rules and requirements.

It is important to understand that the purpose of the UETA is to remove barriers to electronic commerce by validating and effectuating electronic records and signatures. It is NOT a general contracting statute such that the substantive rules of contracts remain unaffected by UETA.

Scope of the Act and Procedural Approach

The scope of this Act provides coverage which sets forth a clear framework for covered transactions, and also avoids unwarranted surprises for unsophisticated parties dealing in this relatively new media. The clarity and certainty of the scope of the Act have been obtained while still providing a solid legal framework that allows for the continued development of innovative technology to facilitate electronic transactions.

With regard to the general scope of the Act, the Act's coverage is inherently limited by the definition of a transaction. The Act does not apply to *all* writings and signatures, but only to electronic records and signatures relating to a transaction, defined as those interactions between people relating to business, commercial and governmental affairs. In general, there are few writing or signature requirements imposed by law on many of the standard transactions that had been considered for exclusion. A good example relates to trusts, where the general rule on creation of a trust imposes no formal writing requirement. Further, the writing requirements in other contexts derived from governmental filing issues. For example, real estate transactions were considered potentially troublesome because of the need to file a deed or other instrument for protection against third parties.

Procedural Approach

Another fundamental premise of the Act is that it be minimalist and procedural. The general efficacy of existing law in an electronic context, so long as biases and barriers to the medium are removed, validates this approach. The Act defers to existing substantive law. Specific areas of deference to other law in this Act include: (1) the meaning and effect of signature under existing law, (2) the method and manner of displaying, transmitting and formatting information, (3) rules of attribution, and (4) the law of mistake.

The Act's treatment of records and signatures demonstrates best the minimalist approach that has been adopted. Whether a record is attributed to a person is left to law outside this Act. Whether an electronic signature has any effect is left to the surrounding circumstances and other law. These provisions are salutary directives to assure that records and signatures will be treated in the same manner, under currently existing law, as written records and manual signatures.

The deference of the Act to other substantive law does not negate the necessity of setting forth rules and standards for using electronic media. The Act expressly validates electronic records, signatures and contracts. It provides for the use of electronic records and information for retention purposes, providing certainty in an area with great potential in cost savings and efficiency. The Act makes clear that the actions of machines (electronic agents) programmed and used by people will bind the user of the machine, regardless of whether human review of a particular transaction has occurred. It specifies the standards for sending and receipt of electronic records, and it allows for innovation in financial services through the implementation of transferable records. In these ways the Act permits electronic transactions to be accomplished with certainty under existing substantive rules of law.

Recognition that the paradigm for the Act involves two willing parties conducting a transaction electronically makes it necessary to expressly provide that some form of acquiescence or intent on the part of a person to conduct transactions electronically is necessary before the Act can be invoked. Accordingly, the Act specifically provides that it only applies between parties that have agreed to conduct transactions electronically. In this context, the construction of the term agreement must be broad in order to assure that the Act applies whenever the circumstances show the parties intention to transact electronically, regardless of whether the intent rises to the level of a formal agreement.

Primary Provisions

The primary provisions of this Act are to provide for the use and legal recognition of electronic records, electronic signatures and electronic contracts. All transactions under this provision must meet the requirements of record retention established by the State Records Commission and the Local Government Records Commission.

The Act applies to electronic records and electronic signatures relating to an electronic transaction where both parties have agreed to conduct business by electronic means. The Act provides that an electronic record and electronic signature satisfies the law for written documents and signatures and provides for legal recognition.

The Act requires a showing of the efficacy of any security procedures to ensure authentication and non-repudiation of all transactions.

Electronic Signatures

This Act provides for the use of “electronic signatures” as an integral part of doing business electronically. The Act defines an electronic signature as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” The Act provides for the legal recognition of an “electronic signature” where the law requires a signature or record to be notarized, acknowledged, verified, or made under oath. The Act provides that any entity with rulemaking authority reviewable under Section 41-22-23 may specify “the type of electronic signature required, the manner and format in which the electronic signature shall be affixed to the electronic record, and the identify of, or criteria that shall be met by, any third party used by a person filing a document to facilitate the process.” Basically, the Act does not provide any standards and policies for uniform procedures related to electronic signatures.